

No. SC95318

In the
Missouri Supreme Court

STATE OF MISSOURI,

Respondent,

v.

AMANDA N. BAZELL,

Appellant.

Appeal from the Circuit Court of Cass County
Seventeenth Judicial Circuit
The Honorable R. Michael Wagner, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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STATEMENT OF FACTS

Respondent incorporates the Statement of Facts from pages 5 through 14 of respondent's substitute brief.

ARGUMENT

Supplement to Point I.

The sentencing enhancements of § 570.030.3 apply to the crime of stealing when “property” is stolen because the statutory definition of “property” makes “value” an element of stealing as defined by § 570.030.1 and interpreting § 570.030.3 to not apply to the crime of stealing would lead to an absurd and illogical result.

This Court requested additional briefing on the question of whether the sentencing enhancement provisions found in § 570.030.3 apply to the crime of stealing property under § 570.030.1. Because the definition of “property” makes “value” part of the “property” element of the offense of stealing, value is an element of stealing for the purposes of § 570.030.3. Further, interpreting § 570.030.3 to not apply to the crime of stealing under § 570.030.1 would lead to an absurd and illogical result. Therefore, the sentencing enhancement provisions of § 570.030.3 apply to the crime of stealing under § 570.030.1.

A person commits the crime of stealing if she “appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.” § 570.030.1,.3, RSMo Cum. Supp. 2009. While stealing is generally a class A misdemeanor,

§ 570.030.9, subsection 3 of the stealing statute, as relevant to this case, states:

Notwithstanding any other provision of law,
any offense in which the value of property or services
is an element is a class C felony if:

...

(3) The property appropriated consists of:

...

(d) Any firearms[.]

§ 570.030.3, RSMo Cum. Supp. 2009.

Subsection 3 of § 570.030 applies to the crime of stealing because the “value” of property is necessarily part of the element of “property” and thus an element of the offense of stealing. “Property” under chapter 570 is defined as “*anything of value*, whether real or personal, tangible or intangible, in possession or in action, and shall include but not be limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument.” § 570.010(12), RSMo Cum. Supp. 2002 (emphasis added). The definition of an element of the offense is a part of the elements of the offense. *See, e.g., State v. Davenport*, 174 S.W.3d 666, 668 (Mo. App., S.D. 2005) (the mental state language from the definition of “deviate sexual intercourse” was an element

of the crime and could be properly conversed). Because “property” cannot be defined without “value,” any stealing of “property,” is, by definition, the stealing of something with “value.” As “value” is part of the definition of “property” and “property” is an element of stealing, the “value” of the property is also an element of stealing. Therefore, at least as to charges stemming from the theft of property, as in this case, § 570.030.3 applies to the crime of stealing under § 570.030.1.

This interpretation of § 570.030 is consistent with a prior decision of this Court. In *State v. Littlefield*, 594 S.W.2d 939 (Mo. 1980), this Court held that the offense of stealing, punishable as a felony because the amount was over \$50, was a lesser-included offense even though the robbery statute did not include an explicit element regarding the value of the property stolen. *Id.* at 941-42. This Court held that “value” was implicitly an element of robbery, stating that robbery included the taking of property of any value and that “the concept of ‘value,’ included within the term ‘property’ by judicial interpretation of the robbery statute...is ‘value’ in the broadest sense, encompassing property ranging in amounts from the least worth to the greatest.” *Id.* at 942. Likewise, the concept of “value” is inherent in the term “property” as defined by § 570.010 and is thus an element of stealing. Therefore, § 570.030.3 applies to the crime of stealing of property under

§ 570.030.1.

It is true that, in *State v. Ruth*, 830 S.W.3d 24 (Mo. App., S.D. 1982), the Court of Appeals held that “the value of the appropriated property is not an element of the offense” under § 570.030.1. *Id.* at 27. Thus, the amendment of a stealing charge with felony enhancement based on value to one based on two prior stealing offenses did not change the elements of the offense or deprive the defendant of a defense. *Id.* at 27. But, in that case, the Court of Appeals was using the term “value” to refer to the *amount* of value, not to the concept of value itself. *Id.* at 26-27. As respondent argued in its initial brief (Resp. Br. 19-20), the amount of value which allows stealing to be punished as a felony is not an element, but a sentencing enhancement which does not implicate the Double Jeopardy clause. But that does not mean that the concept of “value” itself, made part of the element of “property” by § 570.010(12), is not an inherent element of the offense. Thus, *Ruth*’s holding that the amount of value is not an element of stealing does not preclude the finding, made necessary by § 570.010(12), that value is an element of the crime of stealing property.

Moreover, interpreting § 570.030.3 to not apply to the crime of stealing under § 570.030.1 would lead to an absurd and illogical result. In *State v. Passley*, 389 S.W.3d 180 (Mo. App., S.D. 2012), the defendant argued that,

due to the “any offense in which the value of property or services is an element” language of § 570.030.3 and *Ruth*’s holding that the amount of value was not an element of stealing, the enhancement provision did not apply to his conviction for stealing a credit device. *Passley*, 389 S.W.3d at 182-83. The Court of Appeals noted that interpreting the statute as the defendant urged (and appellant now urges) “leads to an absurd and illogical result” because it would hold that “the legislature chose to amend the stealing statute to provide an enhanced punishment for some other offense or offenses but not for the offense mentioned in that very statute.” *Id.* at 184. The Court of Appeals also held that appellant’s interpretation would render “meaningless” subsection 8 (now subsection 9) of the statute setting the punishment for “[a]ny violation of this section for which no penalty is specified in this section” as a class A misdemeanor. *Id.* Because such a proposed interpretation of § 570.030.3, rendered the meaning of that phrase absurd or illogical, the Court of Appeals rejected that illogical meaning. *Passley*, 389 S.W.3d at 183-84. The same is true here. Because the stealing of property is a crime with the inherent value of the property being element of the crime, the enhancement provision of § 570.030.3 applies to make the stealing of the property set out in that subsection punishable as a class C felony.

Determining whether the plain language of a statute leads to an absurd

or illogical result is not a canon of construction that must yield to an apparent “plain meaning” of the statutory language. Instead, it is part of the threshold question to determine whether the plain language of the statute controls or if construction is required. The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute. *Akins v. Director of Revenue*, 303 S.W.3d 563, 565 (Mo. 2010). “A court will look beyond the plain meaning of the statute only when the language is ambiguous *or would lead to an absurd or illogical result.*” *Id.* (emphasis added); *see also State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 540 (Mo. 2012); *Ivie v. Smith*, 439 S.W.3d 189, 202 (Mo. 2014) (“Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result that defeats the purpose of the legislation.”). Thus, the plain language controls only if it is both unambiguous *and* it does not lead to an absurd or logical result. To interpret § 570.030.1 to not include the concept of “value” or § 570.030.3 to not apply to the crime of stealing would lead to the illogical conclusion that the legislature did not intend to affect the very statute it amended and to specifically enhance punishments for the appropriation of property that would not apply to any other crime. This would render § 570.030.3 meaningless. “We presume that the legislature intended every provision of a statute to have effect and that

the legislature did not insert superfluous or meaningless language.” *In re Doyle*, 428 S.W.3d 755, 760 (Mo. App., E.D. 2014). Thus, the felony enhancements for stealing the property set out in § 570.030.3 must apply to the crime of stealing of property under § 570.010. Therefore, the enhancement provision for stealing any firearms under § 570.030.3(3)(d) applied to appellant’s crimes and permitted enhancement of her sentences.

CONCLUSION

In view of the foregoing, appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06 and WD Special Rule XLI, and contains 1,633 words as determined by Microsoft Word 2010 software; and

2. That a copy of this notification was sent through the eFiling system on this 18th day of July, 2016, to:

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